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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,516	07/31/2003	Kenneth L. Shaw	43967-00025USD1.001	4342

7590 05/05/2006

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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,516	Applicant(s) SHAW, KENNETH L.	
	Examiner Tara L. Mayo	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2 through 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewington (U.S. Patent No. 868,838).

Brewington '838, as seen in Figures 1 through 3, shows a block comprising:
with regard to claim 2,

front, back, left and right body portions forming a void (B) within an interior area of the block; and

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a plurality of tabs (4) located on an upper surface (as seen in Figure 2) of said block, said plurality of tabs operable to be received by the void of block of said upper row, wherein one of said tabs is located rearward of the void;

with regard to claim 3,

wherein said tabs are rectangular;

with regard to claim 4,

wherein a lower surface (as seen in Figure 1) of said block is substantially planar;

with regard to claim 5,

wherein said tabs are capable of receiving a portion of geogrid;

with regard to claim 6,

wherein a front face of said tabs aligns with a rear interior face of said void;

with regard to claim 7,

wherein the tabs are arranged laterally between the left and right body portions;

with regard to claim 8,

wherein said front, back, left and right body portions comprise exterior side faces and interior side faces;

with regard to claim 9,

wherein the tabs are located forward of the exterior face of the back body portion;

with regard to claim 10,

wherein the tabs comprise front, back, interior and exterior faces;

with regard to claim 11,

wherein the exterior face of one of said plurality of tabs aligns with the exterior face of said left body portion;

with regard to claim 12,

wherein the exterior face of one of said plurality of tabs aligns with the exterior face of said right body portion;

with regard to claim 13,

wherein the interior face of one of one of said plurality of tabs aligns with the interior face of said left body portion; and

with regard to claim 14,

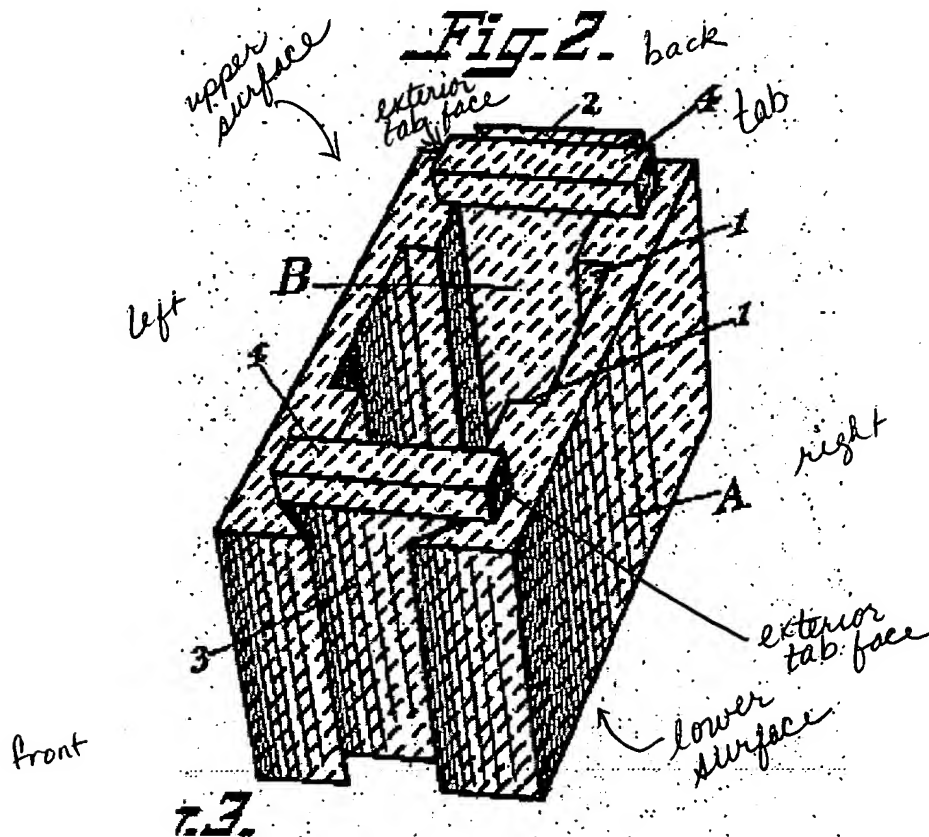
wherein the interior face of one of said plurality of tabs aligns with the interior face of said right body portion.

With regard to claim 2, Brewington '838 fails to teach a plurality of tabs located rearward of the void. It would have been obvious to one having ordinary skill in the art at the time of invention to divide the tab into a plurality of tabs since the same would have merely been a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

With regard to claims 2 and 4, the Examiner notes that the block shown by Brewington '838 has been rotated through 180 degrees to meet Applicant's recitation of an upper block surface and a lower block surface.

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With regard to claim 6, Applicant's claimed limitation of tabs aligned with a rear interior face of the void is met by the prior art. Specifically, the front face of the tab is arranged in parallel to a rear interior face of the void.



Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

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harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 2, 3, 5 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8, 10, 12, 20, 21 and 29 of U.S. Patent No. 6.464.432. Although the conflicting claims are not identical, they are not patentably distinct

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from each other because the claim language is synonymous. For example, the tabs of the instant application are encompassed by the outcroppings of the patent.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm
03 May 2006


TARA L. MAYO
PATENT EXAMINER